IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.907 OF 2004

Laxmibai Sidramappa Surangihalli & ors. ... Appellants.
Versus.
Gajarabai Tukaram Navale & ors. ... Respondents.

Shri B.G.Vaidya for the Appellants.

Shri T.D.Deshmukh holding for Shri A.A.Kulkarni for the Respondents Nos.2 to 5, 7 and 8.

CORAM : ABHAY S. OKA, J.

DATED : 2nd February, 2005.

P.C.:

1. Heard learned Counsel for the parties. The Second Appeal is by the unsuccessful Defendants Nos.1, 3 and 4 for challenging the decree of specific performance passed by the trial Court in favour of the Respondents Nos.1 to 8 and confirmed by the Appellate Court.

2. The contention of the learned Counsel appearing for the Appellant is that the alleged agreement for sale was executed by way of security for repayment of the loan and that is the reason why it was signed by both the original Defendants Nos.1 and 2 though it is stated that the original Defendant No.1 had become owner by virtue of gift. He submitted that the Courts below ought not to have granted discretionary relief of specific performance in favour of the Respondents Nos.1 to 8. I have considered the rival submissions. After having

considered the submissions and the findings recorded by both the Courts below, I find that the findings recorded by the Courts below are based on oral and documentary evidence on record. After considering the oral and documentary evidence the Courts below have rejected the case made out by the Appellants that the agreement for sale was not to be acted upon and that it was only by way of a security. In so far as the exercise of discretion is concerned, in the Second Appeal under section 100 of the Code of Civil Procedure, 1908, no interference can be made as discretion is exercised after considering all the relevant factors.

2. No substantial question of law arises in the Second Appeal. The same is dismissed with no order as to costs.

Judge.